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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

SKYLOCK INDUSTRIES, a California
corporation,

Debtor and Debtor-in-Possession.

Case No. 2:24-bk-17820-BB

Chapter 11

**UNITED STATES TRUSTEE'S
STATEMENT CONCERNING
DEBTOR'S EMERGENCY MOTION
FOR ORDER AUTHORIZING
DEBTOR TO PAY PRE-PETITION
NON-INSIDER EMPLOYEE WAGES &
BENEFITS**

Hearing Date, Time, & Place:

Date: October 1, 2024
Time: 10:00 a.m.
Place: U.S. Bankruptcy Court
Courtroom 1539
255 E. Temple Street
Los Angeles, CA 90012

**TO THE HONORABLE SHERI BLUEBOND, UNITED STATES BANKRUPTCY COURT
JUDGE, DEBTOR, AND ALL PARTIES-IN-INTEREST:**

Peter C. Anderson, the United States Trustee for the Central District of California, Region 16 (“U.S. Trustee”), pursuant to 11 U.S.C. § 507 and Local Bankruptcy Rule 2081-1(a), hereby files this statement concerning *Debtor’s Emergency Motion for Order Authorizing Debtor to Pay Pre-Petition Non-Insider Employee Wages & Benefits* (“Motion”) filed by Skylock Industries, Inc. (“Debtor”).

I. ARGUMENT

The Motion relies on the necessity of payment doctrine to support a request to pay approximately \$42,000 in pre-petition wage obligations.

The necessity of payment doctrine, however, is disfavored in the Ninth Circuit. *Matter of B & W Enterprises, Inc.*, 713 F.2d 534, 537 (9th Cir. 1983) (stating that “[a]bsent compelling reasons, we deem it unwise to tamper with the statutory priority scheme devised by Congress” and, “[e]ven if we were convinced that the Necessity of Payment Rule survived the 1978 Act, appellants have not presented to this court sufficient justification for extending the Necessity of Payment Rule to trucking reorganizations”); *see also In re Kmart Corp.*, 359 F.3d 866, 871 (7th Cir. 2004) (the doctrine of necessity “is just a fancy name for a power to depart from the Code”).

Equally critical, the Motion lacks sufficient evidence to justify departing from the Code’s statutory priority scheme, including evidence that the Debtor holds sufficient funds on hand to make the payment and the payment will not render the estate insolvent as well as evidence that the payment to each employee falls within the limits imposed by Section 507.¹ *See* LBR 2018-2(a)(6) (imposing a burden on the movant to demonstrate that expedited relief is warranted).

Finally, the Debtor appears to seek to pay the administrative fees of a third-party payroll service in the ordinary course of business. The amount owed to the payroll service is not specified.

The general rule is Section 363 does not transform pre-petition debt to an administrative expense and that payment of a pre-petition debt should not take place outside a confirmed plan. *See In re Timberhouse Post & Beam*, 196 B.R. 547, 549-551 (Bankr. Mont. 1996).

¹ A supplement to the Motion should include a list of non-insider employees—or clarification as to which employees previously disclosed are insiders—and prepetition obligations owed and evidence that Debtor has sufficient cash on hand to fund the payroll.

1 The Debtor must make a greater showing, including a showing of harm to the estate if the payment
2 is not authorized, in order to depart from these rules.

3 **II. CONCLUSION**

4 Without supplemental evidence, the Motion fails to present compelling reasons to grant the
5 expedited relief.

6 The U.S. Trustee has communicated with the Debtor's proposed counsel and understands that a
7 supplement to this Motion may be forthcoming. Accordingly, the U.S. Trustee submits this statement to
8 reserve all rights pending the filing of supplemental evidence and requests that if the Court intends to
9 grant the relief requested in the Motion that it do so on an interim basis so that the foregoing concerns may
10 be addressed, and all interested parties have sufficient time to review the relief requested and respond
11 accordingly.

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13 DATED: September 30, 2024

PETER C. ANDERSON
UNITED STATES TRUSTEE

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15 By: /s/ David S. Shevitz
16 David S. Shevitz
17 Trial Attorney
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

915 Wilshire Blvd. Suite 1850, Los Angeles CA 90017.

A true and correct copy of the foregoing document entitled (*specify*): **UNITED STATES TRUSTEE'S STATEMENT CONCERNING DEBTOR'S EMERGENCY MOTION FOR ORDER AUTHORIZING DEBTOR TO PAY PRE-PETITION NON-INSIDER EMPLOYEE WAGES & BENEFITS**

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 9/30/2024, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See Attached:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 9/30/2024, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Debtor:

See Attached:

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) ____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

9/30/2024

Date

David S. Shevitz

Printed Name

/s/ David S. Shevitz

Signature

ADDITIONAL SERVICE INFORMATION

SECTION I – EMAIL SERVICE

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SECTION II – U.S. MAIL SERVICE

Debtor

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